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FILED
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No. 73-1049

In the Supreme Court of the United States

OCTOBER TERM, 1973

SAMUEL G. FERRARO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that he cannot constitutionally be compelled to testify before a grand jury, under a grant of use immunity, concerning crimes for which he has been convicted, while his appeal from that conviction is pending.

Petitioner has been convicted of having made false statements on his federal income tax return, and having conspired to obstruct the enforcement of state laws prohibiting gambling while he was an Allegheny County detective. His appeal from this conviction is presently pending, *United States* v. *Ferraro*, No. 73-1989 (C.A. 3). After his conviction, petitioner was called before a grand jury investigating alleged misconduct by public officials in Allegheny County. On November 13, 1973, he appeared but refused to testify, invoking his privilege against self-incrimination. He was granted immunity pursuant to 18 U.S.C. 6002-6003 but persisted in his refusal to testify. After a hearing, the district court held him in

contempt and ordered him confined until he purged himself of contempt, but not exceeding 18 months or the term of the grand jury (Pet. App. B). The court of appeals affirmed (Pet. App. A).

Petitioner filed this petition for certiorari on January 4, 1974, and Mr. Justice Brennan denied his application for bail on January 11, 1974. On February 11, 1974, he was released from confinement on his agreement to testify before the grand jury. He purged himself of contempt by testifying on March 5, 1974 (App. A, *infra*). Therefore, this petition for certiorari has become moot.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1974.

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[1]Petitioner agrees with this conclusion, as indicated by his brief filed in the court of appeals on his appeal from his criminal conviction (App. A-3, *infra*).

APPENDIX A-1

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
WESTERN DISTRICT OF PENNSYLVANIA
633 U.S. POST OFFICE & COURTHOUSE
PITTSBURGH, PENNSYLVANIA 15219

MARCH 20, 1974

Harriet S. Shapiro, *Esquire*
Office of Solicitor General
Department of Justice
Room 5140
Washington, D.C. - 20530

Re: Samuel G. Ferraro
Contempt-Refusing to Answer
Grand Jury Questions
No. 73-1985 Third Circuit

Dear Mrs. Shapiro:

This is to inform you that on the 11th day of February, 1974, upon motion of the United States Attorney, the United States District Court of the Western District of Pennsylvania released from confinement Samuel G. Ferraro upon his declaration that he would appear before the grand jury and testify as required by law. Since this order has been sealed until further notice by the court, we are not sending you a copy of that order at this time. On March 5, 1974 Mr. Ferraro did appear before the grand jury and testified. Therefore, he is no longer in contempt of court.

It should also be noted that in the case of *United States* v. *Ferraro*, Court of Appeals No. 73-1989 (an appeal from his conviction for violations of 26 U.S.C. §7206(1) and 18 U.S.C. §1511) Appellant Ferraro

made representation to the Court that the matter concerning his contempt conviction had been rendered moot. A copy of that section of the brief is enclosed with this letter for your convenience.

It would seem that appellant should be estopped from asserting that his contempt conviction is not moot before the Supreme Court in light of this declaration to the Circuit Court.

I hope this will provide you with all the information you need. If not, please do not hesitate to contact me.

Very truly yours,

RICHARD L. THORNBURGH
United States Attorney

By: KATHLEEN KELLY CURTIN
Assistant United States Attorney

Enclosure

APPENDIX A-3

Related Proceedings

Although this matter is not before the Court at the present time, it should be noted that this Court had occasion to consider a related proceeding involving the appellant: *In Re: Grand Jury Investigation, Samuel G. Ferraro, Witness*, No. 73-1985.

Subsequent to the imposition of sentence and the filing of his Notice of Appeal, appellant was subpoenaed to testify before a Federal Grand Jury. He was granted testimonial immunity. However, appellant declined to testify, basically for the reasons that he had not testified in the instant case and his appeal would be prejudiced if Grand Jury testimony were required. He was held in contempt of Court and was incarcerated. After this Court upheld the contempt citation, appellant filed a Petition for Writ of Certiorari in the United States Supreme Court. However, this matter has been rendered moot because the appellant has agreed to testify before the Grand Jury.